In the present case there was no evidence before the Board as to any notice to quit at all. There may or may not have been a valid notice to quit, and in the absence of any evidence on the subject I am unable to say an application to a Court for an Order of Ejectment would necessarily fail. So far as concerns the contention by the appellant that there has been a breach of covenant by the respondent for ejectment I am satisfied that the matter is one which the Board correctly left for determination by any Court to which an application for ejectment may be made.

The appeal is dismissed with costs.

Appeal dismissed.

YAP CHOO NEO (w) v. CHENG LAN LIM.

[Orig. Civ. Juris. (Knight, J.) June 27, 1952]

[Singapore — Suit No. 982 of 1951]

Landlord and tenant — Control of Rent Ordinance, 1947, s. 14(b) — Waiver of breach of covenant by accepting rent — Sub-letting — "Hardship".

The plaintiff claimed possession as landlord of certain premises known as the "Katong Resthouse" together with arrears of rent and mense profits. She based her claim on the defendant's alleged breach of an obligation on his lease not to sub-let, and maintained that as she wanted the premises for a family residence the Court should reasonably grant her an order for possession in terms of section 14(b) of the Control of Rent Ordinance, 1947. The plaintiff stated that the defendant had in fact committed two breaches of his covenant, (a) by sub-letting the premises to a partnership — of which he was the managing partner, and (b) by subletting part of the premises to an R.A.F. officer and his wife.

The defendant did not deny that his lease prohibited sub-letting without his landlord's consent, but maintained that the R.A.F. officer and his wife were mere lodgers — not tenants — and that sub-letting to the partnership, if indeed such subletting constituted a breach of his covenant, was waived by his landlord-plaintiff who at all material times knew that the Resthouse was in fact being managed by a partnership.

Held, that (1) the plaintiff had waived the defendant's breach by accepting rent from the partnership; (2) the hardship on the plaintiff cannot reasonably suffice to deprive the defendant and his partners of the profit which their capital and hard work might make it possible for them to reap.

Case referred to:—

(1) *Walrond v. Hawkins* (1874) L.R. 10 C.P.C. 342.

CIVIL SUIT.

N. L. Macassey for the plaintiff.

R. L. Eber for the defendant.

Cur. Adv. Vult.

Knight, J.: — In this suit the plaintiff, who is an elderly Chinese lady, claims possession as landlord of certain premises situated at No. 107 Marine Parade, Singapore, which are known as "the Katong Resthouse" — together with arrears of rent and mesne profits. She bases her claim on the defendant's alleged breach of an obligation of his lease not to sub-let and maintains that as she wants the premises for a family residence the Court should reasonably grant her an order for possession in terms of section 14(b) of the Control of Rent Ordinance (No. 25 of 1947).

As to sub-letting, the plaintiff states that the defendant has in fact committed two breaches of his covenant (1) by sub-letting the premises to a partnership — of which he was the managing partner and (2) by sub-letting part of the premises, i.e., Room No. 14 and a landing outside this room to an R.A.F. officer and his wife (F/Lt. & Mrs. Wright) during part of the period covered by the lease.

The defendant does not deny that his lease prohibits sub-letting without his landlord's consent (which he has not obtained) — but he maintains that the Wright family were mere lodgers — not tenants — and that the sub-letting to the partnership, if indeed such sub-letting constituted a breach of his covenant, was waived by his landlord, the plaintiff, who at all material times knew that the Resthouse was in fact being managed by a partnership. As to whether it is reasonable for the Court to make an order for possession the defendant says that very considerable sums have been paid from partnership funds for renovating and repairing the premises and it would be manifestly unfair that the partnership should be deprived of the chance of reaping any reward for the money its members have spent.

The issues before the Court are thus fourfold:—

(1) Is the partnership a sub-tenant and if so, has a covenant of the lease been breached?

(2) If yes, is the plaintiff's right barred by waiver?

(3) Was the Wright family living in the premises as sub-tenants or merely lodgers in premises over which the defendant had never lost control? and

(4) In all the circumstances of the case, is it reasonable for the Court to make an order for possession?

The first and second of these issues, in my opinion, permit of some simplification as I propose to assume in the first place that the partnership was a sub-tenant and that the sub-letting of the premises to it by the defendant did in fact commit a breach of the defendant's covenant in his lease. In short, I shall

consider the second issue at this stage, i.e., whether, if she accepted rent with knowledge of the existence of this sub-tenancy the plaintiff has waived her right to claim forfeiture for the breach of the covenant to sub-let.

In this regard there can be no possible doubt, as I see it, that the plaintiff knew full well that the management of this Resthouse was indeed a partnership. It should be remembered that her son-in-law, Ho Cheng Hin, who was also her attorney, was himself one of the partners and her daughter Daisy was employed by the partnership as a receptionist for some seventeen months during the period 1947 — 1948. True the plaintiff says that her son-in-law did not keep her properly informed of the actions he took regarding her property — so much so, indeed, that she denies even knowing originally that the defendant was going to use the premises as a Resthouse — further, she maintains that during 1947, 1948 and 1949, she never even met her daughter Daisy though her own house is not far from Marine Parade. Frankly I find these allegations very difficult to believe. The plaintiff normally garaged her car on the Resthouse premises, she is clearly a woman of intelligence and business acumen and quite apart from whether, on the principle of agency, she should be fixed with her son-in-law's knowledge, I have no doubt that she knew full well of the existence of the partnership and was quite happy to receive rent from it. It is not insignificant in this regard that as long ago as 12th August 1949 she seemingly instructed her then solicitors to inform "The Manager" of the Resthouse as to a change in the method of paying rent, (page 20 of Exhibit I).

I find, therefore, that the plaintiff both before and after 25th May 1950 — the date of the current lease when these proceedings were instituted — knew full well that the partnership was managing the Resthouse and that her son-in-law — by written agreement of which she must have had knowledge — was one of the partners. In these circumstances, and assuming that the partnership was in fact an unauthorised sub-tenant, thus breaching the defendant's covenant, the plaintiff clearly waived this breach by accepting rent from the partnership — *Walrond v. Hawkins*[1]. On this finding it is unnecessary for me to consider whether in law the defendant did or did not sub-let his tenancy to the partnership in breach of his covenant — because if he did not, there was certainly no breach.

Next I turn to the alleged sub-letting of Room No. 14 to the Wright family. Much conflicting and at times irrelevant evidence has been called to establish exactly what was this officer's position in these premises — but having considered it at length, I am not prepared to find that he was in fact an exclusive tenant. It must be remembered that when leaving the premises he gave only 48 hours' notice and that no question arose as to his paying rent even up to the end of the month. Again, whether or not it was done to enable someone to look after the Wright infant when his parents were out, it seems that for considerable periods the key to these rooms, like those of the other lodgers, was available to the Resthouse staff. Lastly I am not convinced, despite F/Lt. Wright's evidence, that his rooms were not cleaned by the Resthouse room boys though this may well have been done whilst Mr. Wright was away from home. Whether or not this family were lodgers is purely a question of fact and I am not prepared to find that the defendant did not retain the general control of their rooms or that the family should be deemed to be the exclusive tenant.

This must dispose of the case though I would record — in case a finding might be required elsewhere — that had the plaintiff succeeded on the sub-letting issues I should still have felt it unreasonable to make an order for possession. This partnership at great expense has renovated and repaired what I gather was previously a derelict ruin. The plaintiff, moreover, although it may not be large enough to house all her children and grandchildren — said to number some 30 - 40 people — has another house where she has been living — presumably quite happily — for many years. Her fifth son's wedding, it is said, has had to be postponed because he can find nowhere to live. Undoubtedly this is unfortunate — but it is not a hardship directly affecting the plaintiff and in my opinion, cannot reasonably suffice to deprive the defendant and his partners of the profit which their capital and hard work may make it possible for them to reap.

It follows that the plaintff's case must be dismissed with costs.

Claim dismissed.

GAN HENG SOO v. LEE NYONG TAI (f).

[App. Civ. Juris. (Abbott, J.) July 2, 1952]

[Malacca — Civil Appeal No. 1 of 1952]

Landlord and tenant — Control of Rent Ordinance, 1948, s. 13(1)(i) — Brother — Whether member of family.

The plaintiff-respondent claimed possession of part of her premises which she had let to the defendant. The